DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. ADAMS-WYOMING PROPERTIES Respondent	Case No.: I-00-70283

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-70283) served May 8, 2001, the Government charged Respondent Adams-Wyoming Properties with a violation of 21 DCMR 705.3 for allegedly permitting spillage of waste at a collection point.[1] The Notice of Infraction charged that the alleged violation took place on May 7, 2001 at 2517 Mozart Place, N.W., and sought a fine of $1,000.

[1] 21 DCMR 705.3 provides: "Collectors shall not permit spillage from solid waste containers or collection vehicles or otherwise contribute debris at the point or area of collection." The term "Collectors" as used in this provision is defined as "any person who is engaged in the collection or transportation of solid waste." 21 DCMR 799.1

On June 14, 2001, Respondent filed an answer of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3), along with a request for an evidentiary hearing. A hearing was held on August 17, 2001. Ronnie Herrington, the charging inspector in the case, appeared on behalf of the Government. David Foley, Jr., vice president of Respondent, appeared and testified on its behalf. Russell Adams, property manager for Respondent, also testified on Respondent's behalf. Petitioner's Exhibits ("PX") 100, 101, 104 and 105, and Respondent's Exhibit ("RX") 200 were admitted into evidence without objection.

Based upon the testimony of the witnesses, my evaluation of their credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. At all relevant times, Respondent Adams-Wyoming Properties owned an apartment building located at 2517 Mozart Place, N.W.

2. On May 7, 2001, Inspector Herrington observed rat holes, household trash and other debris on Respondent's property at 2517 Mozart Place, N.W. PX-100-101, PX 104-106.

3. At all relevant times, Respondent had contracted with Bowie's Inc. to haul Respondent's trash and recyclables from 2517 Mozart Place, N.W., four times per week. RX 200.

III. Conclusions of Law

1. In this case, Respondent has been charged only with a violation of 21 DCMR 705.3. Because for the following reasons I conclude that § 705.3 is not applicable to Respondent in this case, I need not reach the substantive issue of whether a violation of § 705.3 actually occurred.

2. Section 705.3 provides: "Collectors shall not permit spillage from solid waste containers or collection vehicles or otherwise contribute debris at the point or area of collection." For purposes of this section, the term "Collectors" has been defined as "any person who is engaged in the collection or transportation of solid waste." 21 DCMR 799.1. In turn, § 705.3 only regulates the practices of solid waste collectors and transporters, not mere property owners. *See DOH v. Sampson*, OAH No. I-00-20342 at 1-2 (Order, February 1, 2002) (noting § 705.3 applies to trash collectors as opposed to property owners).

3. The Government has not suggested, nor do I conclude, that Respondent is a "collector" for purposes of § 705.3. *Id.* Instead, the Government has suggested that because Respondent hired Bowie's Inc. to collect and transport its trash, Respondent should be held responsible for Bowie's Inc.'s alleged violation of § 705.3. *See* 16 DCMR 3201.4 (infraction committed by an individual acting as an agent, partner, director, officer, or employee of a person shall be considered to have been committed by that person).

4. To the extent the law imposes a non-delegable duty on a party, and that party directs an agent, either apparently or actually, to act on its behalf in fulfilling that

duty, that party is properly held accountable for its agent's nonfeasance or malfeasance. *See Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975) (discussing determination of apparent authority); *cf.* Restatement (Second) of Agency § 214 (1958) (discussing tort liability of principal to third persons for failure of agent to perform non-delegable duty).

5. In this case, however, § 705.3 imposes an obligation not upon Respondent, but upon solid waste collectors and transporters. 21 DCMR 799.1. Moreover, there is no evidence in the record to suggest that any liability arising from Bowie's Inc.'s alleged violation of § 705.3 should be imputed to Respondent on the theory that Bowie's Inc. acted as Respondent's "agent, partner, director, officer, or employee" for purposes of complying with § 705.3. *Cf. DOH v. Scoe Associates*, OAH I-00-40357 at 22-23 (Amended Final Order, January 31, 2002) (noting that an agent's failure to perform its own obligations will not usually be imputed to its principal in the absence of a law, regulation or other legal authority permitting such liability); Restatement (Second) of Agency § 213 cmt. d (1958) (noting tort liability of principal to third persons is not triggered merely where, in the performance of its delegable duties, agent was "incompetent, vicious, or careless").

6. Accordingly, I conclude that, under these facts, Respondent cannot be held liable for a violation of § 705.3 as charged in the Notice of Infraction.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, therefore, this ____ day of _____, 2002:

ORDERED, that Respondent Adams Wyoming Properties is **NOT LIABLE** for the violation of 21 DCMR § 705.3 as charged in Notice of Infraction (No. 00-70283), and Notice of Infraction (No. 00-70283) is hereby **DISMISSED WITH PREJUDICE**.

FILED 06/04/02

Mark D. Poindexter
Administrative Judge